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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/698,243

10/31/2003

Patrick J. Treado

E2079-00012

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EXAMINER

PRITCHETT, JOSHUA L

ART UNIT

PAPER NUMBER

2872

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/698,243	<b>Applicant(s)</b> TREADO ET AL.	
	<b>Examiner</b> JOSHUA L. PRITCHETT	<b>Art Unit</b> 2872	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/08</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This action is in response to Request for Continued Examination and Amendment filed March 3, 2008. Claim 1 was amended as requested by applicant.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 6, 9, 10, 13, 14, 17, 18, 21, 22, 25, 26, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Utzinger (US 2002/0065468) as evidenced by Rigler (US 2002/0114224).

Regarding claims 1, 5, 9, 13, 17, 21, 25 and 29, Utzinger teaches non-destructively illuminating a sample with a light of a first wavelength (Figs. 1-3) imaging a first image of the sample using the light emitted from the sample at a second wavelength the second wavelength filtered by an electro-optical tunable filter (para. 0015 and 0025) imaging a second image of the sample using the light emitted from the sample at a third wavelength different from the second wavelength the third wavelength filtered by an electro-optical tunable filter (para. 0015 and

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0025) creating a calculated image of the sample from the first image and the second image (para. 0030) wherein the calculated image is spatially accurate wavelength resolved image (para. 0032).

A spatially accurate wavelength is defined as being formed from multiple frames, each frame created by a particular wavelength. The image created by Utzinger satisfies this definition.

Utzinger teaches the use of fluorescent microscopy (para. 0003) which Rigler states can be used to examine forensic samples (para. 0002). All the different claimed samples are listed in the current specification as functional equivalents (current specification para. 0003).

Regarding claims 2, 6, 10, 14, 18, 22, 26 and 30, Utzinger teaches correcting the calculated image using signals extracted from at least one of the first and second images the signals extracted from a subset of pixels from at least one of the first and second image pixels (para. 0049).

Claims 3, 4, 7, 8, 11, 12, 15, 16, 19, 20, 23, 24, 27, 28, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Utzinger (US 20020065468) as evidenced by Rigler (US 2002/0114224) in view of Treado (US 2002/0113210).

Utzinger teaches the invention as claimed but lacks reference to taking images outside of the area of interest. Treado teaches the subset of pixels is outside the area of interest and subtracting the background signal provided by the light of the wavelength from outside the area of interest from the first and second image (para. 0078). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Utzinger invention include the noise reduction method taught by Treado for the purpose of allowing the observer to focus solely on the object to be examined.

### ***Response to Arguments***

Applicant's arguments, see Amendment, filed March 3, 2008, with respect to the rejection(s) of claim(s) 1 under Batchelder have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Utzinger. Applicant amended the claim language to overcome Batchelder. The Utzinger reference was added to teach the newly amended claim language.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA L. PRITCHETT whose telephone number is (571)272-2318. The examiner can normally be reached on Monday - Friday 7:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephone B. Allen can be reached on 571-272-2434. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joshua L Pritchett/  
Primary Examiner  
Art Unit 2872